

PENELOPE A. PREOVOLOS (SBN 87607)
PPreovolos@mofo.com
MARGARET E. MAYO (SBN 259685)
MMayo@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522

PURVI G. PATEL (SBN 270702)
PPatel@mofo.com
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, California 90017-3543
Telephone: 213.892.5200
Facsimile: 213.892.5454

Attorneys for Defendants
APPLE INC., APPLECARE SERVICE
COMPANY, INC., and APPLE CSC INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FABRIENNE ENGLISH, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

APPLE INC., APPLECARE SERVICE
COMPANY, INC., and APPLE CSC INC.,

Defendants.

Case No. 3:14-cv-01619-WHO

Related Case:
Maldonado, et al. v. Apple Inc. et al.
Case No. 3:16-cv-04067-WHO

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
ADDITIONAL MATERIALS IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO SUMMARY
JUDGMENT [ECF NO. 310]**

Judge: Hon. William H. Orrick
Courtroom: 2, 17th Floor

Complaint Filed: November 4, 2013
Transfer to N.D. Cal.: April 3, 2014
Trial Date: None set

Pursuant to Local Rule 7-11(b), Defendants file this brief response to Plaintiff's "Administrative Motion for Leave to File A Supplemental Motion to Seal and Declaration, and Also Leave to File Bathena Dixon's Corrected Declaration, Brian Dalrymple's Declaration (w/Exhibits), and Ex. L ISO Opposition to Summary Judgment." (ECF No. 310.) Defendants oppose Plaintiff's request for leave to file the **"corrected"** Bathena Dixon declaration, as well as the **new** Brian Dalrymple declaration and exhibits.¹

Throughout this litigation, Plaintiff has regularly disregarded Court-set deadlines.² Plaintiff's most recent administrative motion for leave to file additional materials in support of her summary judgment opposition continues this practice, which is inefficient and creates undue burden for Defendants and the Court. Plaintiff has notified Defendants today that she intends to file an "errata" to fill in citations that are "missing" from Plaintiff's opposition brief and to "correct" (i.e., revise) a sentence in Plaintiff's brief.³ (Declaration of Purvi G. Patel ¶ 2.) Plaintiff is "trying to" file this "errata" "this week," and has stated that it "should be" the last of her post-deadline filings. (*Id.*)

Plaintiff's original deadline to file her opposition was October 24, 2016, which afforded Plaintiff twice the time provided by the Rules. (ECF No. 275.) The Court extended Plaintiff's deadline to October 28. (ECF No. 300.) Plaintiff has effectively given herself an additional extension by filing the "corrected" Dixon declaration and the Dalrymple declaration, and through her anticipated "errata" revising her opposition brief.

Plaintiff's request for leave to file the "corrected" Dixon declaration and Dalrymple

¹ Defendants do not oppose Plaintiff's request for leave to file Exhibit L in light of Plaintiff's representation that the document could not be filed on October 28, 2016, due to an "uploading issue with the ECF system." (ECF No. 310 ¶ 9.)

² See ECF Nos. 180-183 (missed filing deadline for motion for class certification and filed "corrected" exhibits thereafter), 186-187 (eight days after deadline, filed a "corrected" motion for class certification and an errata regarding that "corrected" motion), 194 (order prohibiting further filings in connection with motion for class certification without leave of the Court), 212-214 (missed filing deadline for reply in support of motion for class certification), 220 (eleven days after deadline, filed "corrected" exhibits in connection with reply in support of motion for class certification).

³ Plaintiff was well aware of the missing citations in her opposition brief at the time of filing. (See ECF No. 304-4, ¶ 6.)

1 declaration and exhibits should be denied. Plaintiff has failed to provide any credible justification
 2 as to why she is entitled to additional extensions of time beyond what this Court has already
 3 granted, and after having failed to meet the Court's deadline. Plaintiff's motion offers no
 4 explanation as to why the Dalrymple declaration and exhibits were not timely filed. Further,
 5 Plaintiff's lengthy explanation regarding the various versions of the Dixon declaration
 6 demonstrates that Plaintiff was not prepared to complete her filing on time. (ECF No. 304-4, ¶ 4
 7 [admits that Dixon was still "working on" a new declaration (which contains additional
 8 substantive content) as of the filing deadline on October 28].) Moreover, the "corrected"
 9 declaration was not signed until October 29—a day after Plaintiff's opposition was due. (ECF
 10 No. 310-3.) Plaintiff's failure to timely file these declarations was therefore not a matter of true
 11 technical difficulties (as with Exhibit L, the filing of which Defendants do not oppose).

12 Plaintiff's practice of late and iterative filings is not permitted by the rules of this Court
 13 and has been disruptive and costly for Defendants. Defendants accordingly respectfully request
 14 that the Court issue an order denying Plaintiff's request for leave to file additional materials and
 15 further prohibiting Plaintiff from filing any additional documents in connection with her
 16 opposition to Defendants' motion for summary judgment, including, but not limited to any
 17 document or "errata" that makes corrections or revisions to Plaintiff's opposition brief or
 18 supporting materials. If the Court prefers to reserve ruling on Plaintiff's motion for leave to file
 19 these additional materials, Defendants are willing to address the "corrected" Dixon declaration
 20 and Dalrymple declaration in their reply due November 23, 2016. To prepare their reply brief
 21 efficiently, however, Defendants need for Plaintiff to cease filing additional materials in support
 22 of her opposition.

23 Dated: November 4, 2016

Respectfully submitted,

24 MORRISON & FOERSTER LLP

25
 26 By: /s/ Purvi G. Patel
 Purvi G. Patel

27 ***Attorneys for Defendants***
Apple Inc., AppleCare Service Company,
 28 ***Inc., and Apple CSC Inc.***